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No. 5193

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**In the Supreme Court of the United States**

OCTOBER TERM, 1900 51

UNITED STATES OF AMERICA, PETITIONER

v.  
JESSE W. JEFFERS, JR.

PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA CIRCUIT

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1950**

**No. 519**

**UNITED STATES OF AMERICA, PETITIONER**

**v.**

**JESSE W. JEFFERS, JR.**

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA CIRCUIT**

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit reversing respondent's conviction of violations of the narcotic laws.

**OPINIONS BELOW**

The opinions in the Court of Appeals (R. 39-59) are not yet reported.

**JURISDICTION**

The judgment of the Court of Appeals was entered December 7, 1950 (R. 60). On January 4,



1951, by order of the Chief Justice, the time within which to file this petition for a writ of certiorari was extended to and including January 26, 1951 (R. 61). The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). See also Rules 37(b) (2) and 45 (a), F. R. Crim. P.

#### QUESTION PRESENTED

Whether respondent was entitled to object to the admission in evidence of contraband narcotics claimed to be his property which he had secreted in his aunts' apartment without their permission and which were seized in the course of a search of the apartment without a warrant.

#### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

##### The Fourth Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

##### 21 U. S. C. 174:

If any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or assists in so doing or receives, conceals, buys, sells or in any manner facilitates the transportation,

concealment, or sale of any such narcotic drug, after being imported or brought in, knowing the same to have been imported contrary to law, such person shall, upon conviction, be fined not more than \$5,000 and imprisoned for not more than ten years. Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.

26 U. S. C. 2553(a):

It shall be unlawful for any person to purchase, sell, dispense, or distribute any of the drugs mentioned in section 2550(a) except in the original stamped package or from the original stamped package; and the absence of appropriate tax-paid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession same may be found; \* \* \*

26 U. S. C. 2557(b)(1):

Any person who violates or fails to comply with any of the requirements of this subchapter \* \* \* shall, on conviction, be fined not more than \$2,000 or be imprisoned not more than five years, or both, in the discretion of the court.

#### STATEMENT

Respondent and James M. Roberts were charged in a two-count indictment (R. 1) with violations

of 26 U. S. C. 2553(a) and 21 U. S. C. 174, *supra*. At the trial before the court, a jury having been waived and a severance granted as to respondent Jeffers (R. 16), certain narcotics attributed to his possession and not bearing tax-paid stamps were introduced in evidence over his objection (R. 24, 26-27, 30). Prior to the trial respondent, claiming ownership, had filed a motion to suppress these narcotics as evidence (R. 2), which the court heard and denied (R. 15).

The evidence on this issue showed that Roberts, alias Jim Yellow, a known narcotics dealer with a record of previous narcotic convictions, offered \$500 to Herbert Scott, the house detective of the Dunbar Hotel in Washington, D. C., to let him into a room (also called an apartment) in the hotel where Roberts said that respondent had "some stuff stashed" (R. 18-19). After stalling Roberts by telling him to call back later, Scott informed Lieutenant Karper, in charge of the Narcotics Squad of the Metropolitan Police, of what had happened (R. 19, 21, 23). Scott and Karper obtained from the assistant manager of the hotel a key to the room, which they entered without a search warrant or warrant of arrest (R. 20, 21-22, 23). Karper did not take Scott before a magistrate to apply for a search warrant because he "wanted to get in that room and get that cocaine before it disappeared" and he "had no time to send out for help" (R. 29). In the room they found on the top shelf of a closet a pasteboard box containing 19 bottles of cocaine,

17 of which had no tax-paid stamps on them, and one bottle of codeine without a tax stamp (R. 22). The respondent, arrested the next day after a warrant was procured for his arrest, admitted that the narcotics were his and that he had placed them in the room (R. 26).

The hotel room where the narcotics were seized was rented and occupied by two of respondent's aunts. They paid the rent and theirs were the only names listed on the hotel ledger for that apartment. (R. 8, 13, 20). Respondent occupied another room on a different floor of the hotel, but had a key to his aunts' room, where he often went to leave money for the aunts to pay for the care of his child who lived at another place (R. 9-10, 21). One of the aunts testified that respondent was not given permission to store narcotics in their apartment, and she was not aware that he had done so (R. 11).<sup>1</sup>

The trial court found respondent guilty as charged and sentenced him to imprisonment for a term of four months to a year and a day (R. 31-32).

The Court of Appeals, one judge dissenting, reversed the conviction on the ground that the search and seizure were illegal (R. 60). The majority rejected the Government's contention that respondent had no standing to object to the search and

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<sup>1</sup> One of the aunts, Louise Jeffries, testified as a defense witness at the hearing on the motion to suppress (R. 7-13). It was stipulated that if the other aunt were called, her testimony would be to the same effect (R. 6, 12-13). At the trial it was stipulated that the testimony of Miss Jeffries would be considered part of the record of the trial (R. 31).



seizure because he had no interest in the premises and no right of privacy of his was violated. They said that respondent's "standing to object to the evidence turns upon his claim of ownership of the evidence seized rather than upon an interest in the premises searched" (R. 41), and held "the correct rule to be that one who seasonably objects to the use in evidence against him of property he owns which has been seized as the fruit of an unlawful search or otherwise in violation of the Fourth Amendment is entitled to its exclusion though the premises searched were not his" (R. 43). The majority also held that the fact that the narcotics were contraband subject to seizure and forfeiture<sup>2</sup> and that, by statute, no property rights exist in such articles<sup>3</sup> did not deprive respondent of standing to object to their admission in evidence (R. 43-45, 46-49).

The dissenting judge agreed with the majority "that objection may be made by one who owns property seized, as well as by one who owns or

<sup>2</sup> 26 U. S. C. 2558(a): "All unstamped packages of the drugs mentioned in section 2550(a) found in the possession of any person, except as provided in this subchapter, shall be subject to seizure and forfeiture, and all the provisions of internal revenue laws relating to searches, seizures, and forfeiture of unstamped articles shall be extended to and made to apply to the articles taxed under this subchapter and the persons upon whom the taxes under this subchapter or part V of subchapter A of chapter 27 are imposed."

<sup>3</sup> 26 U. S. C. 3116: "It shall be unlawful to have or possess any liquor or property intended for use in violating the provisions of this part, or the internal-revenue laws, or regulations prescribed under such part or laws, or which has been so used, and no property rights shall exist in any such liquor or property. \* \* \* [Italics supplied.]

possesses the premises searched" (R. 58), but he thought that since the search violated no right of respondent's and was therefore not unconstitutional as to him, and since the unstamped narcotics were contraband and instrumentalities of crime, they were subject to summary seizure. His conclusion was that "where contraband goods are concerned the only protection afforded by the Fourth Amendment is to a person and to premises, the protection in the latter instance being afforded to the owner or possessor only. My view is that a seizure of unstamped narcotics is not unreasonable, so long as no premises and no person are illegally invaded. Apart from his premises and his person, no individual has a protected property right in unstamped narcotics." (R. 58).

#### SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that a person who has no interest in premises searched without a warrant is entitled to object to the use in evidence against him of articles he owns which were seized in the course of such a search.

2. In holding that contraband in which no property rights exist and which is subject to seizure and forfeiture must be suppressed as evidence upon objection by one who claims ownership of such articles but who has no interest in the premises where the articles were discovered in the course of a search without a warrant.

### 3. In reversing respondent's conviction.

#### REASONS FOR GRANTING THE WRIT

1. It has been generally understood that only the victim of an illegal search, i.e., the person whose premises are invaded, has standing to object to the use in evidence of his property seized in such a search. In *Goldstein v. United States*, 316 U. S. 114, in holding that one who was not a party to intercepted telephone communications could not object to their use in advance of trial to induce testimony, this Court referred to the rule of exclusion under the Fourth Amendment and pointed out that, although it had "never been called upon to decide the point, the federal courts in numerous cases, and with unanimity, have denied standing to one not the victim of an unconstitutional search and seizure to object to the introduction in evidence of that which was seized" (p. 121). Later, in *Wolf v. Colorado*, 338 U. S. 25, 30-31, the Court referred to the exclusionary rule as "a remedy which directly serves only to protect those upon whose person or premises something incriminating has been found."

The decision below is the first, so far as we have been able to discover, to accord standing to object to one who claims an interest in the things seized but who has no interest whatever in the premises searched. It is, moreover, in conflict with decisions of the Second and Fourth Circuits cited *infra*, pp. 10-11. The majority below relied, first, upon gen-

eral statements, in cases which did not involve the precise issue presented here, to the effect that the objection may be raised by one who claims ownership in or right to possession of the premises searched or the property seized (*R. 41-42*).<sup>4</sup> *Pielow v. United States*, 8 F. 2d 492 (C. A. 9); upon which the majority also relied (*R. 42*), more directly supports their conclusion, but that case is distinguishable in that the defendant resided in the premises which were searched, and, moreover, the property in question, consisting of books and papers, had been entrusted by him to the possession of the clerk from whom they were taken. Here, on the other hand, respondent had hidden the contraband in his aunts' apartment without their knowledge or permission. In *United States v. De Bousi*, 32 F. 2d 902 (D. Mass.), the only

<sup>4</sup> In each of the cases cited for this proposition (*R. 41-42*) the defendant was denied standing to object because he had no interest in the property seized (*Shore v. United States*, 49 F. 2d 519, 522 (C. A. D. C.), certiorari denied, 283 U. S. 865; *Shields v. United States*, 26 F. 2d 993, 996 (C. A. D. C.), certiorari denied, 278 U. S. 633; *Goldberg v. United States*, 297 Fed. 98, 101 (C. A. 5)) or in either the property or the premises searched (*Gibson v. United States*, 149 F. 2d 381, 384 (C. A. D. C.), certiorari denied *sub nom.* *O'Kelley v. United States*, 326 U. S. 724; *Nunes v. United States*, 23 F. 2d 905, 907 (C. A. 1); *Klein v. United States*, 14 F. 2d 35, 36 (C. A. 1); *United States v. Stappenback*, 61 F. 2d 955, 957 (C. A. 2) (reversed as to one of the appellants, however, on the ground that the search of his suit found in the building was an illegal exploratory search for evidence); *Chepo v. United States*, 46 F. 2d 70, 70-71 (C. A. 3); *Kitt v. United States*, 132 F. 2d 920, 921-922 (C. A. 4); *Remus v. United States*, 291 Fed. 501, 511 (C. A. 6); *McMillan v. United States*, 26 F. 2d 58, 60 (C. A. 8); *Armstrong v. United States*, 16 F. 2d 62, 65 (C. A. 9), certiorari denied, 273 U. S. 766; *Lewis v. United States*, 6 F. 2d 222, 223 (C. A. 9)).



other case cited by the majority (R. 43), the court assumed for the purposes of the motion to suppress that the defendant, who claimed to be the owner of the still and liquor in question, "was on the premises with the consent of the owner, and that he asserted a right to occupy the premises" (p. 903).

We think the decision below cannot be reconciled with the following decisions in which the facts were substantially identical with those involved here:

*Chicco v. United States*, 284 Fed. 434 (C. A. 4). In this case, the officers had a search warrant for certain premises occupied by the defendant Hills but found no contraband liquor there. Upon their demand Hills surrendered to them the keys to adjoining unoccupied premises which were the property of another. In the latter premises the officers found liquor which Hills immediately claimed as his property. In rejecting Hills claim that the keys should have been suppressed as evidence, the court held that only the owner of the adjoining premises had a right to complain of the search, "and certainly not the person who had unlawfully and clandestinely occupied it as a cache for contraband liquor" (p. 436-437).

*Grainger v. United States*, 158 F. 2d 236 (C. A. 4). In this case a search of a cabin owned by Grainger's wife and leased to another disclosed articles belonging to Grainger which incriminated

him in connection with the operation of illicit stills. In holding that Grainger had no standing to claim the rights guaranteed by the Fourth Amendment because he had no right, title or interest in the cabin, the court said (pp. 238-239): "It would thus seem that the accused, seeking to exclude the evidence under the Fourth Amendment, has the burden of showing that he can claim the privileges afforded by the Amendment by virtue of his ownership, title or possession of the premises searched."

*United States v. Ebeling*, 146 F. 2d 254 (C. A. 2), where, in rejecting the defendant's complaint against the admission in evidence of papers found in an allegedly illegal search of the desk he used in the business office where he was employed, the court said (p. 257): "It would seem, however, that the employer who was in possession of the premises was the only one who could object to the search."

So in the case at bar, only the right of privacy of respondent's aunts was violated by the search of their room. Their right in this regard was personal to them and does not avail respondent, who took advantage of their hospitality to secrete the narcotics in their room without their knowledge or permission. We think the decision below is an unwarranted innovation in the law of search and seizure. It affords criminals a ready device for placing beyond the reach of the law things lawfully subject to search and seizure under a search warrant, or without a warrant if incident to a law-

ful arrest, upon their own premises (*United States v. Rabinowitz*, 339 U. S. 56) by the simple expedient of removing them to another's premises which may be immune to a lawful search.

2. If it be thought, as the dissenting judge below conceded (R. 58), that, in general, objection may be made by one, not the owner or possessor of the premises searched, who owns the property seized, still we think he was right in concluding that such a rule does not avail respondent. For, as he pointed out (R. 56-57), the unstamped narcotics were contraband in which, by statute (see fn. 3, p. 6, *supra*), no property rights exist. Possession of such contraband is prima facie evidence of the commission of crime (see pp. 2-3, *supra*), and the articles are subject to seizure and forfeiture (see fn. 2, p. 6, *supra*). The officer had reasonable cause to believe that respondent had secreted narcotics in the room in question and he was fearful that they would disappear before he could obtain a warrant (see p. 4, *supra*). Furthermore, respondent had not entrusted his aunts with possession of the drugs, but, on the contrary, had hidden them in their room in violation of their trust in him. When, therefore, the officer came upon this contraband in the course of a search of which, as even one of the majority Justices conceded (R. 46), respondent had no standing to complain, we submit that he was entitled, as against respondent, to seize it. Cf. *Harris v. United States*,

331 U. S. 145, 154-155. The seizure in such circumstances was not an unreasonable invasion of respondent's right of privacy under the Fourth Amendment.

#### CONCLUSION

In view of the conflict of decisions noted above and the importance of the question in the law as to searches and seizures, we respectfully submit that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,  
*Solicitor General.*

JANUARY 1951.